

HONORABLE CHRISTOPHER M. ALSTON

HEARING DATE: FRIDAY, SEPTEMBER 7, 2018

HEARING TIME: 9:30 A.M.

LOCATION: 700 STEWART STREET, COURTROOM 7206

RESPONSE DUE: FRIDAY, AUGUST 31, 2018

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

CRITICAL POWER EXCHANGE, LLC,

Debtor.

No. 18-12037 (Chapter 7)

MOTION FOR RELIEF FROM STAY TO  
PROCEED WITH STATE COURT  
LITIGATION

SYNNEX Corporation (“SYNNEX”), a Delaware corporation, moves the Court for an order granting it relief from stay to proceed with litigation against the Debtor pending in the Superior Court of the State of California for the County of Alameda (Case No. RG16818192) (the “Litigation”). This motion is based on the files and records herein and on the accompanying Declaration of Jane Fogarty. In support of this motion, SYNNEX states:

**I. BACKGROUND**

On May 6, 2014, SYNNEX entered into a Purchase Agreement with the Debtor for the sale of a generator. Upon inspection, SYNNEX concluded that the Debtor misrepresented the condition and prior use of the generator. SYNNEX determined that the Debtor’s misrepresentations damaged SYNNEX by at least \$886,000.

MOTION FOR RELIEF FROM STAY TO PROCEED WITH  
STATE COURT LITIGATION – Page 1

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1 On June 3, 2016, SYNEX filed the complaint that initiated the Litigation against the Debtor.  
2 See Exhibit A to the Fogarty Declaration. On August 2, 2016, the Debtor filed its answer. The  
3 Litigation has actively proceeded since its initiation, including the addition of third parties. The  
4 Litigation was set for mediation on May 24, 2018.

5 On May 21, 2018, the Debtor filed this case by filing a petition, without the accompanying  
6 schedules and statement of financial affairs. Docket Entry No. 1<sup>1</sup>. On May 22, 2018, Edmund J.  
7 Wood was appointed to serve as Chapter 7 trustee. In the matrix attached to its petition, the Debtor  
8 listed one non-governmental creditor: SYNEX. *Id.*, Page 7. On June 1, 2018, the Debtor filed its  
9 schedules and statement of financial affairs. Docket Entry No. 9. Schedule A/B lists no assets. *Id.*,  
10 Page 5. Schedules D and E/F list one creditor: SYNEX. *Id.*, Pages 6-7. The Debtor asserts that it  
11 sold all of its assets on February 14, 2017. *Id.*, Page 12. The Debtor lists no gross revenue during  
12 2018. *Id.*, Page 10.

## 13 II. AUTHORITY

### 14 A. Relief from Stay

15 Section 362(a)<sup>2</sup> stays certain actions against debtors that have filed for bankruptcy protection.  
16 Section 362(a)(1) stays judicial proceedings against a debtor to collect on a claim that arose prior to  
17 such debtor filing a petition for bankruptcy protection. Section 362(d) provides that the Court may  
18 grant relief from stay as to actions listed under Section 362(a) for cause. Cause is not defined by the  
19 Bankruptcy Code and is determined on a case-by-case basis. *In re McDonald*, 755 F.2d 715, 717 (9th  
20

21 \_\_\_\_\_  
22 <sup>1</sup> Docket entry references refer to docket entries in the above-captioned Chapter 7 case.

23 <sup>2</sup> Section references refer to the United States Bankruptcy Code, found at Title 11 of the United States Code,  
unless otherwise indicated.

1 Cir. 1985). The decision to grant relief from stay is left to the discretion of the bankruptcy court.  
2 *In re Castlerock Properties*, 781 F.2d 159, 163 (9th Cir. 1986).

### 3 4 **III. ARGUMENT**

5 Relief from stay is appropriate in this case. SYNEX seeks to continue the Litigation to  
6 establish the amount of its claim against the Debtor. The Litigation has been pending for more than  
7 two years and its five counts involve only aspects of state law: breach of contract, fraud, negligent  
8 misrepresentation, breach of express warranty, and breach of implied warranty. The Litigation is  
9 ready for mediation and, if a settlement is not reached, to proceed to trial.

10 Relief from stay will not prejudice any party. The Debtor lists no assets and SYNEX is the  
11 creditor listed on the Debtor's schedules.<sup>3</sup> The Debtor purports that it sold all its assets in 2017 and  
12 discloses no revenue for 2018. Relief from stay will not impact the Debtor's non-existent operations.  
13 Further, granting relief from stay will not prejudice Mr. Woods's ability to administer this estate.  
14 SYNEX will not seek to collect on any assets of the estate without further order of this Court.

### 15 **IV. CONCLUSION**

16 Based on the foregoing, SYNEX respectfully requests an Order from the Court granting it  
17 relief from stay to proceed with the Litigation.

18 DATED this 17<sup>th</sup> day of August, 2018.

19 BUSH KORNFIELD LLP

20  
21 By /s/ Thomas A. Buford  
22 Thomas A. Buford, WSBA #52969  
23 Attorneys for SYNEX Corporation

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<sup>3</sup> On August 15, 2018, the Internal Revenue Service filed a claim in the amount of \$33,480.